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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
CENTRAL DISTRICT

OMAR RODRIGUEZ; CINDY
GUILLEN-GOMEZ; STEVE
KARAGIOSIAN; ELFEGO
RODRIGUEZ; AND JAMAL
CHILDS,

Plaintiffs,

Y.

BURBANK POLICE
DEPARTMENT; CITY OF
BURBANK,

Defendants.

CASE NO.: BC 414 602

Assigned to: Hon. Joanne B. O'Donnell

JAMS Reference No. 1220040470
Hon. Diane Wayne (Ret.),
Discovery Referee

Amended 12th Report & Recommendation of the Discovery Referee

Amended 12th Report of the Discovery Referee

I. Procedural History

An in-person hearing was held March 11, 2011, followed by telephonic hearings held May 10 and June 28, 2011. The Plaintiffs Omar Rodriquez, Cindy Guilen-Gomez and Steve Karagiosian (collectively, the "Plaintiffs") were

1 represented by LAW OFFICES OF RHEUBAN & GRESEN and Solomon E.
2 Gresen, Esq. The Defendants Burbank Police Department and the City of Burbank
3 (collectively, "Defendants") were represented by BALLARD, ROSEN, GOLPER
4 & SAVITT LLP and Phillip L. Reznik, Esq. and MITCHELL SILBERBERG &
5 KNUPP LLP and Lawrence A. Michaels and Veronica T. Von Grabow.

6 7 **II. Legal History**

8 The Plaintiffs, three current police officers of the Burbank Police
9 Department, filed a Complaint on May 28, 2009. The Complaint alleged that over
10 a period of years the Plaintiffs were discriminated against, variously, based on their
11 race, sex, pregnancy and/or ethnicity. The Complaint also alleged that the
12 Plaintiff's were retaliated against for opposing such alleged discrimination and
13 harassment. The Plaintiff's assert that they suffered adverse employment decisions
14 including: imposition of discipline, demotion, failure to obtain promotions, and
15 failure to obtain specific work assignments. The Defendants deny all allegations.

16 On October 2, 2009, in Department 37, the Honorable Judge Joanne B.
17 O'Donnell, Judge of the Superior Court, appointed Diane Wayne, Judge (Ret.), as
18 the Discovery Referee pursuant to *Civil Code of Procedure* §§ 639(a)(5), 640 and
19 645.1. All discovery disputes have been assigned to the Discovery Referee. **The**
20 **Referee now amends Report #12 at page 4, lines 24-26 only.**

21 **III. Recommendation:**

22 At the hearing, the following Motions were considered:

- 23 **1. The Defendants' Motion To Compel Further Responses by O.**
24 **Rodriguez, Karagiosian and Guillen-Gomez to Special**
25 **Interrogatories Set Three and for Monetary and Terminating**
26 **Sanctions.**

27 This Motion to Compel seeks further responses to two Special
28 Interrogatories the Defendants propounded on the Plaintiffs: Special
Interrogatories 10 and 11 (the "Interrogatories"). The Interrogatories relate to

1 "RETURNED/DESTROYED DOCUMENTS¹." Specifically, Special
2 Interrogatory 10 asks: "IDENTIFY each SOURCE from which YOU or YOUR
3 AGENT obtained originals or copies of any RETURNED/DESTROYED
4 DOCUMENT." Further, Special Interrogatory 11 asks: "[i]f YOU or YOUR
5 AGENT obtained originals or copies of any RETURNED/DESTROYED
6 DOCUMENTs directly from a physical location where those documents were
7 stored, without the involvement of any natural person as an intermediary, describe
8 in full and complete detail how YOU or YOUR AGENT obtained physical custody
9 of each such document."

10 In response, the Plaintiffs asserted that the Defendants must provide them
11 with a list of all "RETURNED/DESTROYED DOCUMENTS." The Plaintiffs
12 claimed that this list is necessary to refresh their recollection and that they could
13 not provide an answer to the Interrogatories with it. They also objected to the
14 Interrogatories on the grounds of: Attorney-Client Privilege and compound
15 questioning. The purpose of this motion was to seek information on how the
16 Plaintiffs received those documents. This Referee recommended that further
17 answers were required and the Court adopted the ruling on April 21, 2011.

18 "Unless otherwise limited by order of the court . . . any party may obtain
19 discovery regarding any matter, not privileged, that is relevant to the subject matter
20 involved in the pending action or to the determination of any motion made in that
21 action, if the matter either is itself admissible in evidence or appears reasonably
22 calculated to lead to the discovery of admissible evidence." *Cal. Code Civ. P. §*
23 *2017.010*. "For discovery purposes, information should be regarded as 'relevant to
24 the subject matter' if it might reasonably assist a party in evaluating the case,
25 preparing for trial, or facilitating settlement thereof." *Lipton v. Superior Court*, 48

26
27 ¹ Documents that the Plaintiffs either destroyed or returned to Defendant City of Burbank as a
28 result of: (1) Defendant's *Ex Parte* Application For Temporary Restraining Order And Order To
Show Cause Re: Preliminary Injunction filed on August 6, 2009; (2) related and supplemental
papers filed with the Court; (3) Judge Chalfant's Order dated August 27, 2009; and/or (4) Judge
Chalfant's Order dated October 13, 2009.

1 Cal. App. 4th 1599, 1611 (1996); *Gonzalez v. Superior Court*, 33 Cal. App. 4th
2 1539, 1546 (1995). Furthermore, information that is reasonably calculated to lead
3 to the discovery of admissible evidence does not require that it necessarily be
4 admissible at trial; rather, the test is whether the information sought might
5 reasonably lead to other evidence that would be admissible. *See Davies v.*
6 *Superior Court*, 36 Cal. 3d. 291, 301 (1984); *Lipton*, 48 Cal. App. 4th at 1611-12.
7 Importantly, “[e]ach answer in a response to interrogatories shall be as complete
8 and straightforward as the information reasonably available to the responding party
9 permits.” *Cal. Code Civ. P. § 2030.220(a)*.

10 In the instant case, the Interrogatories seek information “that is relevant to
11 the subject matter” and is both “itself admissible in evidence [and] appears
12 reasonably calculated to lead to the discovery of admissible evidence.” *Cal. Code*
13 *Civ. P. § 2017.010*. Further, the Interrogatories are not precluded by the
14 limitations imposed by the Court or the Attorney-Client Privilege. Plaintiff argues
15 that Judge O’Donnell’s October 2, 2009 Order² limiting certain discovery applies
16 to these Interrogatories. However, the Interrogatories only ask about the original,
17 third-party “SOURCE[s]” from which the Plaintiffs and/or their counsel obtained
18 any of the “RETURNED/DESTROYED DOCUMENT[s].”

19 Despite the Order of this Court the further answers are inadequate and not
20 verified. In fact, Plaintiffs Guillen and Karagiosian have not provided any
21 answers. The purported responses by Rodriguez only provide that he received the
22 information while employed by the Burbank Police Department not “how” he
23 received them. Additionally, Rodriguez has provided inconsistent answers in his
24 deposition. Defendants are entitled to the information. Accordingly, Plaintiffs
25 Rodriguez, Guillen and Karagiosian shall provide complete and verified responses
26 to the Interrogatories within 5 days.

27
28 ² “ . . . to the extent that plaintiff provided any or all of the documents to his attorney, such
information is entitled to the attorney-client privilege. The fact of transmission triggers the
privilege.”

1 Defendants are awarded sanctions in the amount of \$1535.00.
2 Terminating sanctions striking Plaintiff Rodriguez Answer to the Cross Complaint
3 are denied.

4 "[T]he court shall impose a monetary sanction under Chapter 7
5 (commencing with Section 2023.010) against any party, person, or attorney who
6 unsuccessfully makes or opposes a motion to compel further response to a demand,
7 unless it finds that the one subject to the sanction acted with substantial
8 justification or that other circumstances make the imposition of the sanction
9 unjust." *Cal. Code Civ. P. § 2031.310(h)*. In awarding sanctions, "[a] court must
10 balance the necessity of penalizing frivolous conduct against the danger of chilling
11 the diligent pursuit of lawsuits by an attorney for his or her client . . . *Monex*
12 *International, Ltd. v. Peinado*, 224 Cal.App.3d 1619, 1624-25 (1990) (citation
13 omitted).

14 This request must be granted because the Plaintiffs acted without
15 "substantial justification". Additionally, the California Code of Civil Procedure
16 provides that courts may impose sanctions against a party who engages in conduct
17 that is a misuse of the discovery process. Disobeying a court order is such an
18 abuse. *CCP §§ 2023.010(f),(g), 2-23.030*.

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22 **2. The Defendants' Opposition for a Protective Order and Request**
23 **for Sanctions. Grant.**

24 Plaintiffs counsel filed an untimely Motion for Protective Order for the
25 taking of a non-party deposition, Tina Gunn, based on his unavailability. The
26 deposition had been scheduled for six weeks prior to the opposition. The Motion
27 was filed the day the deposition was to be heard, April 19, 2011 and scheduled for
28 hearing on May 10, 2011. The filing of the Motion of course mooted the
deposition hearing. Nevertheless, the Defendants offered to reschedule if Plaintiffs

1 agreed to reschedule the deposition of one of their witnesses who be out of town
2 for the trial (which had been recently rescheduled). Plaintiffs refused.

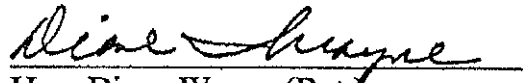
3 The motion was subsequently dismissed before it could be heard and
4 Defendants seek sanctions for having to oppose a frivolous motion pursuant to
5 *Civil Code* Section 2023.010.
6

7 The filing of the Motion was clearly a pretext for unilaterally effecting a
8 last-minute cancellation of the deposition in a misuse of the discovery process. It
9 is way too late in this proceeding to engage in this kind of activity.
10

11 Defendants seek monetary sanctions as a result of the time expended in
12 pursuing this motion. Defendants are awarded sanctions in the amount of
13 \$15000.00.

14 **IT IS SO RECOMMENDED.**
15

16
17 Date: July 11, 2011


18 Hon. Diane Wayne (Ret.)
19 Discovery Referee
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22 All matters set forth in the above Amended Report #12 of Referee having been
23 considered; the Court hereby approves and adopts said Report as the decision of
24 the court, including the findings and recommendations therein.
25

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27 Date: July ____, 2011

28

Hon. Joanne B. O'Donnell,
Judge of the Superior Court

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Rodriguez, Omar, et al. vs. Burbank Police Department, et al.
Reference No. 1220040470

I, Lulu Santos, not a party to the within action, hereby declare that on July 12, 2011 I served the attached AMENDED 12TH REPORT & RECOMMENDATION OF THE DISCOVERY REFEREE on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at Los Angeles, CALIFORNIA, addressed as follows:

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I declare under penalty of perjury the foregoing to be true and correct. Executed at Los Angeles,

CALIFORNIA on July 12, 2011.



Lulu Santos
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